

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**JAMES E. RODGERS,**

**Plaintiff,**

**v.**

**CHARLES HINSLEY,  
JOHN DOE, DEBBIE  
MIDDENDORF and  
BARBARA MUELLER,**

**Defendants.**

**No. 05-0201-DRH**

**MEMORANDUM and ORDER**

**HERNDON, District Judge:**

Now before the Court is Rodgers' Rule 41 Notice of Voluntary Dismissal (Doc. 19). Specifically, Rodgers moves to dismiss without prejudice his claims against Defendants because he has "received information that the conditions of confinement (being subjected to harmful environmental tobacco smoke) has been corrected by Defendants." (Doc. 19). Rodgers requests that the dismissal be without prejudice to allow refiling of this lawsuit in the event that Defendants violate his rights in the future. On April 16, 2007, Defendants filed a response to the notice (Doc. 21). In their response, Defendants maintain that Defendant Hinsley is no longer employed as the Warden at Menard and urge the Court to dismiss with prejudice Plaintiff's cause of action arguing that any such future claim that Plaintiff may have likely would be a new claim and against new defendants. In light of the

circumstances in this case, the Court finds that dismissal without prejudice is warranted. Accordingly, pursuant to **Federal Rule of Civil Procedure 41(a)(2)**, the Court **ACKNOWLEDGES** Plaintiff's notice of dismissal and **DISMISSES without prejudice** Plaintiff's cause of action. The Court will close the case.

**IT IS SO ORDERED.**

Signed this 17th day of April, 2007.

/s/ David RHerndon  
**United States District Judge**